

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Hubbell Power Systems, Inc.
Leeds, Jefferson Co., AL**

USEPA ID NUMBER ALD003396983

CONSENT ORDER NO. 10-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Hubbell Power Systems, Inc (hereinafter "Hubbell") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act of 1978 (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Hubbell operates a brass, bronze and aluminum foundry in Leeds, Jefferson County, Alabama, that is assigned EPA Identification Number ALD003396983.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On December 16, 2009, a representative of the Department conducted an on-site compliance evaluation inspection (hereinafter "CEI") of Hubbell. The CEI and a review of Hubbell's compliance showed the following:

- (a) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii), a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste as listed in 335-14-2-.04(4)(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 335-14-3-.03(5)(a) provided he marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

Hubbell accumulated one 300-gallon forklift dump container of hazardous waste (spent foundry sand) on site, without a permit, and failed to mark the container with either the words "Hazardous Waste" or with other words describing the contents. The container was located in a satellite accumulation area (SAA) next to the sand reclaiming area.

- (b) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(4)(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

Four 300-gallon SAA forklift dump containers located next to the sand reclaiming area were not closed; hazardous waste was not being added or removed from the containers at the time of inspection.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)2., a generator who accumulates either hazardous waste or acutely hazardous waste listed in 335-14-2-.04(4)(e) in excess of the amounts listed in 335-14-3-.03(5)(c)1. at or near any point of generation must, with respect to the initial amount of waste (55 gallons of hazardous waste or one quart of acutely hazardous waste), comply within three days with 335-14-3-.03(5)(a) or other applicable provisions of Division 335-14. During the three-day period, the generator must continue to comply with 335-14-3-.03(5)(c)1.(i) and (ii). The generator must mark the container holding the initial amount of hazardous waste with the date the initial amount was reached.

Four SAA forklift dump containers (approximately 300-gallons each) were located next to the sand recycling area. All of the containers were full; an accumulation start date had not been marked on any of the SAA forklift dump containers.

- (d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.03(2), facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any un-permitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater which could threaten human health or the environment.

Sand destined for disposal as hazardous waste had spilled on the concrete pad around the 90-day hazardous waste storage roll-off. The concrete pad was not protected from the environment.

Facility records indicated that a small amount of hazardous waste had not been placed in the 90-day hazardous waste storage roll-off in over 24 hours. A rain event (.03 inches of rain) had occurred at the facility the night before the inspection.

- (e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)5. referencing ADEM Admin. Code r. 335-14-3-.03(5)(a)3., while being accumulated on-site each container and tank is labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste number.

EPA hazardous waste number(s) was not marked on one 15-gallon hazardous waste container located in the 90-day hazardous waste storage area.

- (f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)5. referencing ADEM Admin. Code r. 335-14-6-.03(8)(b), documentation of compliance with 335-14-6-.03(8)(a) [indicating arrangements to familiarize local police (or county sheriff) department, local fire department, emergency response contractors, local hospitals, and State and local emergency response agencies with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes] must be maintained at the facility.

Documentation indicating the required arrangements made with local police (or county sheriff) department, local fire department, emergency response contractors, local hospitals, and State and local emergency response agencies was not maintained onsite.

- (g) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.04(4)(b), a copy of the contingency plan and all revisions to the plan must be submitted to all local law enforcement, fire departments, hospitals, and ADEM Field Operations Division and local emergency response teams that may be called upon to provide emergency services. Documentation of compliance with this requirement must be maintained at the facility.

Documentation demonstrating that the contingency plan had been submitted to local law enforcement agencies, fire departments, hospitals, and ADEM Field Operations Division's Birmingham Branch and local emergency response teams was not maintained onsite.

- (h) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4 referencing ADEM Admin. Code r. 335-14-6-.02(7)(c), facility personnel must take part in an annual review of the initial training required in 335-14-6-.02(7)(a) [hazardous waste management training]. Facility records indicate that

An employee who handles hazardous waste, has not received the required hazardous waste training since June 15, 2006.

5. At the conclusion of the December 16, 2009 CEI, the Department's representative prepared and issued a preliminary inspection report, which listed areas of potential noncompliance noted at the time of the inspection, to Hubbell.

6. As a result of the CEI, Hubbell was issued a Notice of Violation, dated January 14, 2010, which cited violations of hazardous waste regulations that were discovered during the CEI.

7. On February 17, 2010, Hubbell provided to the Department written descriptions of the actions taken by Hubbell's personnel to correct the above violations. In its response Hubbell declared that all violations noted during the December 16, 2009 CEI had been corrected.

8. Hubbell consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein. Hubbell neither agrees nor disagrees with the stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMA, has consented to the terms of this Consent Order.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

10. [(a) Hubbell does not agree with certain allegations and contentions of the Department as presented in this Consent Order, and denies that it violated the cited ADEM statutory provisions incident to said allegations, and denies any liability for administrative penalties related to or arising from the allegations. However, in the spirit of cooperation and with the desire to avoid the burden and expense of litigation of an enforcement action, to amicably resolve and settle all matters of dispute between Hubbell and the Department, and with the desire to comply with applicable environmental rules and regulations, Hubbell does not contest this Consent Order and agrees to abide by its terms;

(b) Hubbell contends that it responded in an expeditious basis to address the issues raised by the CEI;

(c) Hubbell contends that no environmental harm resulted from the issues raised by the Department in paragraph 4 of this Consent Order and that the "rain event" referenced in paragraph 4(d) consisted of .03 inches of rain and there is no reason to believe that hazardous waste was released to the environment.

11. Hubbell neither admits nor denies the Department's contentions, and the Department neither admits nor denies Hubbell's contentions.

12. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

13. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATION:** Although Hubbell did not operate its facility in such a manner as not to prevent the release of hazardous waste to the environment, the Department is not aware of any irreparable harm to the environment resulting from the alleged violations.

(b) **THE STANDARD OF CARE:** Hubbell did not exhibit a standard of care commensurate with applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Hubbell's failure to comply with regulatory requirements does not appear to have conferred an economic benefit.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Hubbell has cleaned and sampled the concrete pad where the hazardous waste was located. A review of the sampling data revealed all applicable chemicals of concerns were at concentrations below appropriate screening values.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Hubbell does not have a previous history of violations of the ADEM Admin. Code div. 335-14.

(f) THE ABILITY TO PAY: Hubbell has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has determined the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation. (See Attachment A.)

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Hubbell, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Hubbell agree to enter into this Consent Order with the following terms and conditions:

A. Hubbell agrees to pay to the Department a civil penalty in the amount of \$8,500.00 in settlement of the violations alleged herein within sixty days from the effective date of this Consent Order.

Failure to pay the civil penalty within sixty days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Hubbell agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Hubbell's name and address and the ADEM Administrative Order Number of this action.

C. That, commencing immediately upon the effective date of this Order and henceforth, Hubbell shall comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

F. Hubbell agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Hubbell agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained

herein in the Circuit Court of Montgomery County. Hubbell also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Hubbell agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Hubbell, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Hubbell) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Hubbell, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Hubbell agrees to not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

I. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Hubbell does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The parties agree that this Consent Order shall not affect Hubbell's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.


L. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Hubbell of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Hubbell Power Systems, Inc.


(Signature of Authorized Representative)

William R. Hains
(Printed Name)

Division Vice President
(Printed Title)

7.6.10
(Date Signed)

Alabama Department Of Environmental
Management

Lance R. LeFleur
Director

(Date Executed)

Attachment A

Penalty Calculation Worksheet

Hubbell Power Systems, Inc.

ALD003396983

Leeds, Jefferson County, Alabama

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to properly mark or label a satellite accumulation area container.	1	\$100	\$0	\$0
Failure to close satellite accumulation containers.	4	\$400	\$0	\$0
Failure to mark accumulation start date on satellite accumulation containers.	4	\$400	\$0	\$0
Failure to clean up spilled hazardous waste dust in a timely fashion	1	\$5,000	\$0	\$0
Failure to mark EPA hazardous waste number(s) on a container in the 90 day hazardous waste storage area.	1	\$100	\$0	\$0
Failure to provide documentation of arrangements with state and local emergency responders.	1	\$500	\$0	\$0

Failure to provide documentation demonstrating that the contingency plan had been submitted to local and state emergency responders	1	\$500	\$0	\$0
Failure to provide hazardous waste training to all employees that handle hazardous waste.	1	\$1,500	\$0	\$0
Totals:	14	\$8,500.00	\$0	\$0

Economic Benefit: _____ \$0
Mitigating Factors: _____ \$0
Ability to Pay: _____ \$0
Other Factors: _____ \$0

Civil Penalty: _____ **\$8,500.00**

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors